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FOOD SERVICE

ADMINISTRATIVE POLICY #7 SCHOOL YEAR 2001-2002

SUBJECT: Group Buying Services

DATE: March 6, 2002

Questions have arisen concerning the procurement responsibilities of School Food Authorities (SFAs), school cooperatives and other Child Nutrition Program outlets that belong to group buying services, such as Hospital Purchasing Service (HPS). To help address these concerns, the United States Department of Agriculture (USDA) has provided the following guidance.

HPS is a nonprofit organization that has SFAs and school cooperatives among its members. As such, SFAs and school cooperatives may purchase goods and services through HPS. HPS contracts with various suppliers. Since HPS is not a recipient or subrecipient of federal funds, nor a procurement agent for either a recipient or subrecipient of federal funds, the procurement requirements of 7 CFR Parts 3016 and 3019 do not apply to HPS= acquisition of suppliers. **However, these requirements always apply to SFAs, school cooperatives and any other Child Nutrition Program outlets, regardless of HPS membership.**

For the remainder of this memorandum, we will use the term CN Program participant to include SFAs, school cooperatives and all other CN Program outlets.

CN Program participants may purchase goods and services through group buying services like HPS in several ways, including:

- \$ By becoming a member of the group buying services.
- \$ By formally contracting with the group buying service for it to act as either a procurement agent or a supplier of goods and services.
- \$ By participating in a State-procured contract with the group buying service, for it to act as either a procurement agent or a supplier of goods and services.

Group Buying Services Membership

This option is most commonly used. Since membership fees are usually minimal amounts, no procurement procedures need to be employed in order to become a member of a group buying service. **However, a CN Program participant must always conduct a competitive procurement solicitation before it purchases anything from the group buying service or its suppliers.**

For formal procurement, either the sealed bid or competitive negotiation method must be used.

In either case, the solicitation documents must:

- \$ Identify the CN Program participant's membership in the buying service;
- \$ State its intention to purchase from that organization or its suppliers when their offer is the most responsive.

The buying service:

- \$ Must provide goods or services that precisely meet the specifications in the solicitation;
- \$ Must agree to comply with all terms and conditions of the solicitation and resulting contract;
- \$ Must not make price adjustments that exceed the adjustment factor (if any) identified in the solicitation.

For informal procurement, which falls under the small purchase threshold, other suppliers must be contacted to obtain price comparisons. Written quotes are preferred, with verbal quotes confirmed in writing. Regardless of the supplier or suppliers used, a CN Program participant must aggregate the purchases and conduct a formal procurement the following year when the small purchases for a single item or related group of items exceeds the small purchase threshold in a one-year period.

Bids or quotes from other potential contractors cannot be rejected in order to purchase through the buying service, unless it or its suppliers truly offer the best price.

Contracting with a Group Buying Service

(To Act as a Procurement Agent or a Supplier of Goods and Services)

A formal competitive procurement resulting in a contract is required for CN Program participants when a buying service is used as a procurement agent or supplier of goods and services. To be considered for a contract award, the buying service must respond to the solicitation, just as any other interested supplier. The CN Program participant must evaluate the buying service's response, using the same procedures and evaluation criteria used for all potential contractors. To meet responsiveness requirements, the goods or services provided through the buying service must precisely meet the specifications in the solicitation.

Since contract pricing methods cannot be established by potential contractors, the CN Program participant must state the contract cost method (fixed price or cost reimbursable, with or without a fixed fee) that will be used. A buying service or other potential contractor must accept the contract pricing method established by the CN Program participant.

State Agency Contract with a Buying Service

CN Program participants are also permitted to piggyback on an existing State agency contract with a buying service. The State-procured contract must include the CN Program participants in question (for example, SFAs and school cooperatives), either explicitly or because they belong to the class that is covered by the contract. In a given situation, this could mean that public school districts qualify, but not private schools and institutions. Regrettably, we do not have a State agency contract with a buying service in Michigan.

In accordance with 3016.36(c) and 3019.43, it is vital that all procurement transactions be conducted in a manner providing free and open competition. This principle fully applies to purchases made through group buying services. No matter which procurement option is chosen, a CN Program participant may not enter into or extend a contract to purchase any item whose price will change on a cost plus percentage basis. In all cases "cost plus a percent of cost" contracts are strictly prohibited, even when using the services of HPS. The full text of 7 CFR 3016 and 7 CFR Part 3019 can be found at <http://www.gpo.gov>.

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To determine if your contract is in compliance with procurement regulations, check your contract with HPS or similar organizations for cost plus percentage of cost **or** cost plus percentage of income provisions. If you are not in compliance, you will need to take the necessary corrective actions. ***USDA has required that all corrective action must be implemented by all School Food Authorities and school cooperatives by School Year 2002-2003 (July 1, 2002). After these dates, the costs of continued purchases under cost-plus-percentage contracts cannot be funded from the nonprofit food service account.***

Please direct any questions related to this memorandum to the Food and Nutrition Program at 517.373.0420.